

August 1, 2018

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**VIA CERTIFIED MAIL, RETURN RECEIPT REQUESTED, AND
FIRST CLASS MAIL**

Regional Freedom of Information Officer
U.S. EPA, Region 10
Office of Ecosystems, Tribal and Public
Affairs
1200 6th Avenue ETPA-124
Seattle, WA 98101

Eric Martenson
U.S. EPA - Criminal Investigation Division
805 SW Broadway, Suite 620
Portland, OR 97205

RE: Boise Cascade Company
Request for Disclosure of Documents and Information under Freedom of
Information Act
Our File No.: 005700-234496

Dear Regional Freedom of Information Officer and Special Agent Martenson:

This office represents Boise Cascade Company of Boise, Idaho.

As used herein, the term “EPA” means the U.S. Environmental Protection Agency, including but not limited to its Management, Agents, Representatives, Investigators, Consultants, Employees and Independent Contractors.

As used herein, the term “DEQ” means the Oregon Department of Environmental Quality, including but not limited to its Management, Agents, Representatives, Investigators, Consultants, Employees and Independent Contractors.

As used herein, “Eric Martenson” refers to Mr. Eric Martenson in his capacity as a Special Agent of EPA, or in any other capacity.

As used herein, “Craig Ball” refers to Mr. Craig Ball in his capacity as an investigator on behalf of DEQ, or in any other capacity.

We hereby formally request, under the Freedom of Information Act, 5 USC § 552 and the regulations promulgated thereunder, each and every document in the EPA’s possession, dominion or control relating to enforcement actions, permits, alleged permit violations and/or

investigations concerning discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility at any time, as well as any other matters in which EPA may be investigating Boise Cascade's Elgin, Oregon facility. The requested documents include, but are not limited to, the following:

1. The EPA's administrative and investigative files containing information of any nature related to discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility or any other environmental matters at this facility. This information should include any worksheets, work papers, notes, emails, documents, memoranda, computations, and other materials prepared or accumulated relative to discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility, and any other environmentally related issues EPA is investigating relative to this facility, including internal documents, memoranda, memoranda of all interviews of persons regarding discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility or any other environmentally related matters at this facility, copies of all statements (sworn or otherwise) given by individuals, related to discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility or any other environmentally related matters at this facility, and all case activity records, written reports and recommendations concerning actions to be taken by EPA and/or DEQ in response to discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility or any other environmentally related matters at this facility.
2. A list of any information and documents described in paragraph 1, above, and maintained electronically, identifying each document by subject matter and format (i.e. tape, disk, etc.).
3. Any and all files relative to discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility or any other environmentally related matters at this facility, that include information and documents obtained pursuant to summonses, requests for information, or documents voluntarily provided by third parties which are not otherwise included in the EPA's administrative or investigative files.
4. Any and all files relative to discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility, or any other environmentally related matters at this facility, that may have been prepared by independent consultants, examiners, economists, engineers and any other specialists performing services for or on behalf of EPA and/or DEQ and which are not otherwise described above.
5. Any and all "desk files" and "bench files," including independently created or maintained files and case files, that may be maintained by inspectors or auditors working for or on behalf of EPA and/or DEQ, containing documents or information described in any of the paragraphs above and which are not contained in EPA's main, administrative or investigative files.

6. Copies of any and all documents, notes, memoranda and other written communications between Craig Ball, Eric Martenson or anyone else working for or on behalf of EPA and/or DEQ and relating to or concerning any environmentally related matters at Boise Cascade Company's Elgin, Oregon facility.

7. Copies of any and all documents, notes, memoranda and other written communications provided Eric Martenson or anyone else working for or on behalf of EPA to any Task Forces within the State of Oregon, and including without limitation the Oregon Environmental Crimes Task Force, relating to or concerning discharges to Phillips Creek from Boise Cascade Company's Elgin, Oregon facility or any other environmentally related matters at this facility.

We have determined that the information requested is not exempt under disclosure laws, is not a classified document, is not a protected internal communication, is not protected by "privacy" and is not a "protected investigative record" within the meaning of the Freedom of Information Act. If any material is deemed to be exempt, we hereby request a detailed statement of the portion deleted or withheld, a full statement of the reasons for the refusal of access, and specific citations or statutory authority for the denial. Specifically, if the EPA determines that an exemption applies to some or all of the requested information, we request that a privilege log be provided in the form of a Vaughn Index. In *Vaughn v. Rosen*, 484 F.2d 820 (D.C. Cir. 1973), *cert. denied*, 415 U.S. 977 (1974), the Court rejected an agency's conclusory affidavit stating that requested FOIA documents were subject to exemption. *Id.* at 828. "A Vaughn Index must:

- (1) Identify each document withheld;
- (2) State the statutory exemption claimed; and
- (3) Explain how disclosure would damage the interests protected by the claimed exemption." *Citizens Comm'n on Human Rights v. FDA*, 45 F.3d, 1325, 1326 n.1 (9th Cir. 1995). A Vaughn Index "'permit[s] the court system effectively and efficiently to evaluate the factual nature of disputed information.'" *John Doe Agency v. John Doe Corp.*, 493 U.S. 146, 149 n.2 (1989) (quoting *Vaughn*, 484 F.2d at 826). With a Vaughn Index, we will have the means to adequately assess if any claimed exemptions have merit, thereby avoiding potentially costly litigation to seek that item.

We believe that your office has access to, custody and control of the requested information, but if not, we hereby request prompt notice of the current location of the information and the identity and contact information of any individuals to whom request for production of the information described in this Freedom of Information Act Request should be directed. To expedite this request, we are willing to discuss specific instances of deletion or other exemption claims in advance of a final decision.

This letter shall confirm that our client, Boise Cascade Company, hereby agrees to pay for all reasonable search and copying costs that maybe associated with this request. However, we will

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appreciate the opportunity to inspect the records before any documents are copied. If search and copying costs exceed \$200, please telephone us in advance for an agreement as to such additional costs.

Thank you in advance for your cooperation in this matter.

Very truly yours,



Marc K. Sellers

MKS:smg

cc: Craig Ball

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